

Message Text

LIMITED OFFICIAL USE

PAGE 01 TAIPEI 03366 01 OF 02 081029Z

ACTION EA-09

INFO OCT-01 ISO-00 DHA-02 H-01 L-03 CIAE-00 DODE-00

INR-07 NSAE-00 PA-01 USIA-06 PRS-01 SP-02 EAE-00

/033 W

-----081050Z 112404 /12

P 081000Z JUN 77

FM AMEMBASSY TAIPEI

TO SECSTATE WASHDC PRIORITY 3844

LIMITED OFFICIAL USE SECTION 1 OF 2 TAIPEI 3366

E.O. 11652: N/A

TAGS: SHUM, TW

SUBJECT: QUESTIONS FOR JUNE 14 HUMAN RIGHTS HEARING

REF: (A) STATE 125498, (B) STATE 129450, (C) STATE 129431

1. THE FOLLOWING ARE EMBASSY RESPONSES TO QUESTIONS POSED IN REFS A AND B. AS CAUTIONARY NOTE, THE DEPARTMENT SHOULD BEAR IN MIND THAT SINCE THE EMBASSY HAS NO LEGAL OFFICER, OUR ANSWERS TO SPECIFIC QUESTIONS OF LAW SHOULD BE CONSIDERED TENTATIVE AT BEST. DEFINITIVE ANSWERS ON QUESTIONS OF GROC LAW WOULD, WE BELIEVE, HAVE TO COME FROM THE GROC.

2. (RESPONSE TO REF A, PARA 2A): THE MOST AUTHORITATIVE RECENT PUBLIC STATEMENT SPECIFICALLY FORBIDDING TORTURE WHICH WE HAVE BEEN ABLE TO FIND WAS MADE DECEMBER 15, 1976, BY INTERIOR MINISTER CHANG FENG-HSU BEFORE THE LEGISLATIVE YUAN. IN PRESS REPORTS, CHANG WAS INDIRECTLY QUOTED AS SAYING THAT TORTURE WAS STRICTLY FORBIDDEN IN ORDER TO PROTECT HUMAN RIGHTS. REPORTS OF TORTURE AND CRUEL TREATMENT, USUALLY ASSOCIATED WITH POLICE QUESTIONING, OCCASIONALLY APPEAR IN THE LOCAL PRESS. WE EXPECT THE UNREPORTED INCIDENCE OF TORTURE IS SOMEWHAT GREATER. MOST OF IT, WE UNDERSTAND, TAKES PLACE DURING THE TWENTY-FOUR HOURS BETWEEN A SUSPECT'S

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 TAIPEI 03366 01 OF 02 081029Z

ARREST AND THE TIME HIS CASE MUST BE TURNED OVER TO THE PUBLIC PROCURATOR. DURING THIS PERIOD, RESPONSIBLE CRITICS STATE THEIR BELIEF THAT THE POLICE OCCASIONALLY EMPLOY BRUTAL MEASURES TO AID THEIR INVESTIGATION, EVEN THOUGH TORTURE IS FORBIDDEN.

THERE HAS BEEN AT LEAST ONE RECENT REPORT OF ADMINISTRATIVE DISCIPLINE GIVEN TO AN ALLEGED TORTURER. (SEE PARA IIIA OF FY-78

SECURITY ASSISTANCE ACT HUMAN RIGHTS REPORT.)

3. (RESPONSE TO REF A, PARA 2B): AS WE UNDERSTAND IT, THERE ARE CURRENTLY SIX LAWS WHICH THE GROG DEEMS CENTRAL TO MARTIAL LAW. THESE ARE: NATIONAL GENERAL MOBILIZATION LAW OF 1942; THE MARTIAL LAW OF 1934 (AMENDED 1948 AND 1949); THE MILITARY TRIAL LAW OF 1956; TEMPORARY PROVISIONS EFFECTIVE DURING THE PERIOD OF COMMUNIST REBELLION (ADOPTED 1948, AMENDED 1960, 1966, AND 1972); THE STATUTE FOR THE PUNISHMENT OF REBELLION OF 1949 (REVISED 1950); AND THE STATUTE FOR THE INVESTIGATION AND ERADICATION OF BANDIT SPIES DURING THE PERIOD OF THE SUPPRESSION OF THE REBELLION OF 1950. TEXTS OF PRINCIPAL PROVISIONS OF THESE WERE POUCHED TO THE DEPARTMENT AS ENCLOSURES OF TAIPEI A-53 OF MARCH 11, 1975. AS FAR AS WE ARE AWARE, AMENDMENTS TO THESE LAWS SINCE THE 1950'S HAVE BEEN INSIGNIFICANT (THE GROG HAS CONTINUED TO REGARD ITSELF AS BEING IN A STATE OF CIVIL WAR) AND WE ARE UNABLE TO DETERMINE WHETHER THE AMENDMENTS HAVE TENDED IN PRACTICE TO EXPAND OR REDUCE THE RESTRICTIONS ON POLITICAL ACTIVITY AND HUMAN RIGHTS. (COMMENT: WE WOULD UNDERSCORE AGAIN THAT THE GROG IS UNLIKELY TO FEEL ITSELF LIMITED BY PROVISIONS OF LAW IF IT PERCEIVES THAT THE ISSUE OF ITS SECURITY IS AT STAKE.) AS FAR AS WE KNOW, THERE ARE NO LAWS SPECIFICALLY APPLICABLE TO "POLITICAL PRISONERS," A TERM WHICH THE GROG DOES NOT USE AND WHICH IN ANYBODY'S LEXICON IS SUBJECT TO A WIDE VARIETY OF DEFINITIONS.

4. (RESPONSE TO REF A, PARA 2C): CIVIL HABEAS CORPUS PROVISIONS ARE CONTAINED IN THE LAW OF HABEAS CORPUS LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 TAIPEI 03366 01 OF 02 081029Z

PROMULGATED JUNE 22, 1935, EFFECTIVE FROM MARCH 15, 1936, AND AMENDED ON APRIL 26, 1938. THE LAW REQUIRES THE AGENT OF ARREST/DETENTION TO GIVE WRITTEN NOTIFICATION TO THE PERSON ARRESTED/DETAINED AND HIS DESIGNATED RELATIVE OR FRIEND OF THE REASON FOR HIS ARREST OR DETENTION. THE SAME PEOPLE MAY APPLY TO THE DISTRICT COURT OR THE RELEVANT HIGH COURT FOR THE ISSUE OF A WRIT OF HABEAS CORPUS. UPON RECEIPT OF SUCH AN APPLICATION, THE COURT SHALL, IF IT DEEMS THE APPLICATION EVIDENTLY GROUNDLESS UNDER LAW, DISMISS THE SAME BY A RULING WITHIN TWENTY-FOUR HOURS. IF THE COURT DEEMS THE APPLICATION JUSTIFIABLE, IT SHOULD ISSUE A WRIT OF HABEAS CORPUS, AND THE ORGANIZATION EXECUTING THE ARREST/DETENTION SHALL HAND OVER THE PERSON ARRESTED/DETAINED TO THE COURT WITHIN TWENTY-FOUR HOURS OF RECEIPT OF THE WRIT. THE COURT MAY THEN RELEASE THE PERSON OR SEND HIM TO THE PROCURATOR FOR INVESTIGATION IF IT SUSPECTS HE OF HAVING COMMITTED AN OFFENSE. OUR READING OF THE MILITARY TRIAL LAW INDICATES THAT ALTHOUGH SOME HABEAS CORPUS PROVISIONS APPEAR TO EXIST, THEY ARE NOT AS WELL DEFINED AS THOSE IN

THE CIVIL LAWAM FURTHERMORE, WE UNDERSTAND THAT AT LEAST
SOME PRISONERS HAVE BEEN DETAINED BY MILITARY COURTS WITHOUT
REFERENCE TO HABEAS CORPUS PROCEEDINGS.

5. (RESPONSE TO REF A, PARA 2D): IN GENERAL, GUARANTEES
OF DUE PROCESS IN THE MILITARY COURTS ARE MUCH LESS EFFECTIVE
THAN THOSE IN CIVIL COURTS. AGAIN, IT IS IMPORTANT TO
REMEMBER THAT, UNDER THE TERMS OF THE TEMPORARY PROVISIONS
AND MARTIAL LAW, GUARANTEES OF DUE PROCESS MAY BE WAIVED BY
THE GOVERNMENT.

6. (RESPONSE TO REF A, PARA 2E): THE LEGAL BASIS FOR THE
ROC'S POST-PUBLICATION CENSORSHIP IS THE PUBLICATION LAW,
WHICH WAS ENACTED AND PROMULGATED IN 1930 AND REVISED IN
1947, 1952, 1958, AND 1973. UNDER THE PROVISIONS OF THIS
LAW, THE GOVERNMENT CAN PROHIBIT THE SALE, CONFISCATE THE
PUBLICATION, SUSPEND THE PUBLICATION OR REVOKE THE REGISTRA-
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 TAIPEI 03366 01 OF 02 081029Z

TION OF THE PUBLICATION IF THE PUBLICATION CONTAINS ANYTHING
WHICH IS DEEMED SEDITIOUS, WHICH COMMITS OR INSTIGATES
OTHERS TO COMMIT OFFENSES OF INTERFERENCE WITH THE LAWFUL
EXERCISE OF PUBLIC FUNCTIONS, OR AGAINST RELIGION AND THE
DEAD, OR AGAINST PUBLIC MORALS. THE VARIOUS PROVISIONS
OF THE PUBLICATION LAW ARE CITED AS APPROPRIATE WHEN THE

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 TAIPEI 03366 02 OF 02 081033Z

ACTION EA-09

INFO OCT-01 ISO-00 DHA-02 L-03 H-01 CIAE-00 DODE-00

INR-07 NSAE-00 PA-01 USIA-06 PRS-01 SP-02 EAE-00

/033 W

-----081049Z 112528 /12

P 081000Z JUN 77

FM AMEMBASSY TAIPEI

TO SECSTATE WASHDC PRIORITY 3845

LIMITED OFFICIAL USE SECTION 2 OF 2 TAIPEI 3366

GROC ENGAGES IN POST-PUBLICATION CENSORSHIP OR WHEN IT
SUSPENDS OR REVOKES THE PUBLICATION'S REGISTRATION.

7. (RESPONSE TO REF B, PARA 2A): THE QUESTION OF MARTIAL
LAW DOES NOT OFTEN ARISE IN INFORMAL DISCUSSIONS, EVEN WITH
OPPOSITIONISTS. TO THE LIMITED EXTENT IT DOES, EMBASSY
OFFICERS HAVE GENERALLY EXPRESSED THE POINT OF VIEW THAO
MARTIAL LAW CONTRIBUTES TO AN UNFAVORABLE IMAGE OF THE ROC
ABROAD, AND THAT ITS LEGITIMATE INTERNAL SECURITY FUNCTIONS
COULD BE CARRIED OUT THROUGH THE CIVIL LAW.

8. (RESPONSE TO REF B, PARA 2B): OTHER THAN WHAT WE HAVE
READ IN COPIES OF LETTERS FROM TAIWANESE IN THE U.S. TO
VARIOUS CONGRESSMEN WHICH THE DEPARTMENT HAS SENT US AS
BACK-UP MATERIAL TO LETTERS DRAFTED BY EA/ROC TO THE
CONGRESSMEN CONCERNED, THE EMBASSY HAS NO INFORMATION ON
THE ROLE, IF ANY, WHICH CHEN'S "CONFESSION" PLAYED OR MIGHT HAVE
PLAYED IN THE TRIAL OF YEN MING-SHENG AND YANG CHIN-HAI.

9. COMMENT: WHEN ALL IS SAID AND DONE, RESPECT AND PRO
TECTION FOR HUMAN RIGHTS ON TAIWAN IS SOMEWHAT DEPENDENT ON
LAWS AND REGULATIONS (WHICH APPEAR TO US TO BE A BEWILDERING
MELANGE OF OVERLAPPING JURISDICTIONS, EXCEPTIONS AND EMERGENCY
PROVISIONS), BUT EVEN MORE ON THE ATTITUDE OF THE GROC LEADERSHIP.
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 TAIPEI 03366 02 OF 02 081033Z

THAT ATTITUDE HAS BEEN SLOWLY LIBERALIZING. WE HOPE THAT
THE PUBLICITY AFFORDED WITNESSES AT CONGRESSIONAL HEARINGS
ON HUMAN RIGHTS IN TAIWAN WILL NOT GIVE A TOTALLY ONE-SIDED
IMPRESSION OF THE HUMAN RIGHTS SITUATION ON TAIWAN AND THAT
RECOGNITION WILL BE GIVEN TO GRADUAL IMPROVEMENTS
WHICH HAVE BEEN BROUGHT ABOUT OVER TIME. OTHERWISE, THE
HAND OF THE MORE LIBERAL COUNCILS IN THE GROC MAY WELL
BE GRAVELY WEAKENED.
UNGER

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: HUMAN RIGHTS, POLICIES
Control Number: n/a
Copy: SINGLE
Sent Date: 08-Jun-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977TAIPEI03366
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770204-0038
Format: TEL
From: TAIPEI
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770676/aaaacork.tel
Line Count: 209
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 01441782-c288-dd11-92da-001cc4696bcc
Office: ACTION EA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 STATE 125498, 77 STATE 129450, 77 STATE 129431
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 03-Jan-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2221869
Secure: OPEN
Status: NATIVE
Subject: QUESTIONS FOR JUNE 14 HUMAN RIGHTS HEARING
TAGS: SHUM, TW
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/01441782-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009